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V.H., Appellant)	
)	
and)	Docket No. 10-2297
)	Issued: July 13, 2011
U.S. POSTAL SERVICE, CARDISS COLLINS)	
FACILITY, Chicago, IL, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

On August 28, 2010 appellant timely appealed the March 5, 2010 merit decision of the Office of Workers' Compensation Programs, which declined to modify a prior decision denying compensation. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant is entitled to continuation of pay for the period March 15 through April 28, 2004 and wage-loss compensation for the period April 29 through June 4, 2004.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On March 12, 2004 appellant, then a 50-year-old limited-duty nixie clerk, sustained an injury in the performance of duty.² A coworker sprayed some type of pine-scented mist at or near her. The Office accepted appellant's claim for exacerbation of chronic sinusitis. Appellant stopped working on March 15, 2004 and remained off work until June 5, 2004. The employing establishment paid continuation of pay from March 15 through April 28, 2004. Appellant filed a claim for wage-loss compensation (Form CA-7) for the period April 29 through June 4, 2004.

The Office received several "Return to Work/School Verification" forms from Advocate Health Center. The initial form, dated March 15, 2004, was signed by Dr. Thelma M. Evans, a Board-certified internist, who diagnosed urinary and exacerbation of chronic sinusitis due to exposure to fumes at work. Dr. Evans excused appellant from work beginning March 15, 2004. She also noted that appellant was expected to resume work on March 22, 2004.

A March 24, 2004 return to work form indicated that appellant had been seen that same day.³ Appellant's diagnoses were allergic reaction to face and sinusitis. She was reportedly unable to work March 24 to 30, 2004 and she was expected to resume work on March 31, 2004. When Dr. Evans saw appellant again on March 31, 2004, she excused appellant from work through April 5, 2004. Appellant's diagnoses included urticaria and exacerbation of chronic sinusitis due to fume exposure at work. Dr. Evans noted an April 5, 2004 return to work date. She also noted work restrictions of no stairs, walking/standing limited to 25 percent of shift, extended break periods (30 minutes) and a chair with back support. The limitations were expected to remain in effect for a three-month period.

Dr. Patricia Burke, a Board-certified internist also with Advocate Health Center, saw appellant on April 7, 2004 and provided another return to work form. She diagnosed sinusitis and facial edema aggravated by fumes exposure in March. Dr. Burke also noted "[d]rowsiness related to medication." She ordered a computerized tomography scan of the sinuses.⁴ Dr. Burke indicated that appellant was unable to work from April 5 to 7, 2004 and could return to work on April 15, 2004.

An April 13, 2004 return to work form from Dr. Evans indicated that appellant was unable to work from March 15, 2004 to "undetermined." Dr. Evans continued to diagnose urticaria and exacerbation of chronic sinusitis due to fume exposure at work. She advised appellant to return in two weeks. When appellant returned on April 27, 2004, Dr. Evans continued to report her return to work date as "undetermined." Appellant's diagnoses remained the same and Dr. Evans advised her to return in four weeks.

Dr. Evans also submitted an April 27, 2004 attending physician's report (Form CA-20). She identified March 15, 2004 as the date of injury. Appellant reported having been exposed to

² Appellant had been working limited duty as a consequence of a November 18, 2001 employment-related left knee injury

³ The caregiver's signature is illegible.

⁴ Dr. Burke's patient referral form also included reference to "panic attacks."

noxious fumes at work. Dr. Evans noted that “fumes were sprayed into [appellant’s] face by [a] coworker.” She diagnosed urticaria and exacerbation of chronic sinusitis and panic disorder due to fumes at work. Dr. Evans reported that she first saw appellant on March 15, 2004 and had seen her on five occasions since then, including April 27, 2004. Appellant’s treatment included oral steroids, topical steroids, antihistamines and antibiotics. Dr. Evans also noted that appellant had been disabled since March 15, 2004 and it was yet “unknown” when she would be able to resume regular work. She further noted that appellant was still experiencing significant difficulty with sinus congestion, rhinorrhea and occasional bleeding. Dr. Evans also remarked that appellant’s panic disorder was uncontrollable again due to the work problem and appellant would follow-up with psychotherapy.

In a June 20, 2008 decision, the Office found the medical evidence did not support work-related disability during the period March 15 through June 4, 2004. Consequently, it denied compensation for the claimed period.

Appellant requested an oral hearing, which was held on November 18, 2008. She submitted a March 25, 2005 report from Dr. Evans, who indicated that appellant had been off work from March 12 through June 4, 2004 due to exposure to noxious fumes sprayed in her face by a coworker on March 12, 2004. Dr. Evans noted that appellant experienced urticaria of the face, neck and extremities, exacerbation of chronic sinusitis and exacerbation of panic disorder. She further noted that appellant received therapy, including psychotherapy, for these problems and returned to work when sufficiently recovered. Dr. Evans also made mention of appellant “not having to work directly with the offending coworker.”

By decision dated February 12, 2009, the Branch of Hearings and Review affirmed the Office’s June 20, 2008 decision denying compensation.

On February 10, 2010 appellant requested reconsideration. Her request was accompanied by a December 17, 2008 report from Dr. Tony Hampton, a Board-certified family practitioner associated with Advocate Health Center. Dr. Hampton reported that appellant was under his care and she had a history of noxious fume exposure at work dating back to March 2004. Appellant’s symptoms related to this exposure included nasal congestion, sinus congestion, rhinitis and headache. Dr. Hampton also reported recurring symptoms of facial swelling, eye burning, urticaria of the face and neck, nose bleeds, throat pain and excessive oral mucous production. He further noted: “[Appellant’s] condition has also affected her mentally causing headache and anxiety related this condition which affects her ability to work productively due to exacerbations which can occur if the offending environment or person causing the initial assault remain.” Dr. Hampton indicated that, due to the severity and frequency of appellant’s headaches, he felt she was justified in being off work during the period March 15 to June 4, 2004. He further indicated that the therapy she received during this time was also appropriate to help her mentally recover.

The Office denied modification by decision dated March 5, 2010.

LEGAL PRECEDENT

A claimant has the burden of establishing the essential elements of her claim, including that the medical condition for which compensation is claimed is causally related to the employment injury.⁵ For wage-loss benefits, the claimant must submit medical evidence showing that the condition claimed is disabling.⁶ The evidence submitted must be reliable, probative and substantial.⁷ Benefits are available only while the effects of a work-related condition continue.⁸ Compensation for wage loss due to disability is available for periods during which an employee's work-related medical condition prevents her from earning the wages earned before the work-related injury.⁹ The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.¹⁰

For most employees who sustain a traumatic injury, the Act provides that the employing establishment must continue the employee's regular pay during any periods of resulting disability, up to a maximum of 45 calendar days.¹¹ This is called continuation of pay (COP). The employing establishment, not the Office, pays COP.¹² In order to be eligible for COP, a person must have a "traumatic injury," as defined at 20 C.F.R. § 10.5(ee), which is job related and the cause of the disability. The employee must also file a Form CA-1 within 30 days of the date of the injury and begin losing time from work due to the traumatic injury within 45 days of the injury.¹³

An injured employee may also be entitled to compensation for lost wages incurred while obtaining authorized medical services.¹⁴ This includes the actual time spent obtaining the

⁵ 20 C.F.R. § 10.115(e) (2010); see *Tammy L. Medley*, 55 ECAB 182, 184 (2003). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

⁶ 20 C.F.R. § 10.115(f).

⁷ *Id.* at § 10.115.

⁸ *Id.* at § 10.500(a).

⁹ *Id.*

¹⁰ *Id.* at § 10.501(a).

¹¹ 5 U.S.C. § 8118; *Id.* at § 10.200(a).

¹² *Id.*

¹³ 20 C.F.R. § 10.205(a).

¹⁴ See 5 U.S.C. § 8103(a); *Gayle L. Jackson*, 57 ECAB 546, 547-48 (2006). An employee who is eligible for COP may similarly claim lost time due to the need for medical examination and treatment. *Id.* at § 10.205(a)(1).

medical services and “a reasonable time spent traveling to and from the [medical] provider’s location.”¹⁵ As a matter of practice, the Office generally limits the amount of compensation to four hours with respect to routine medical appointments.¹⁶ However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.¹⁷

ANALYSIS

The Office determined that the medical evidence of record did not establish temporary total disability for the period March 15 to June 4, 2004. Thus, appellant was found not entitled to the 45 days of COP she had already received from her employing establishment and not entitled to wage-loss compensation for the subsequent period April 29 to June 4, 2004. The relevant evidence consisted of a series of return to work slips from Advocate Health Center covering the period March 15 to April 27, 2004. Appellant was seen on six occasions during this time frame and was diagnosed with urticaria and exacerbation of chronic sinusitis attributable to fume exposure at work. The April 27, 2004 return to work form signed by Dr. Evans indicated that appellant had been disabled since March 15, 2004 and her return to work date was as yet “undetermined.”

The return to work slips are insufficient to establish that appellant was totally disabled during the claimed period because they do not explain why or how she was disabled due to her March 12, 2004 employment injury. The forms included a diagnosis of exacerbation of chronic sinusitis, but neither Dr. Evans nor Dr. Burke explained how appellant’s accepted condition ostensibly precluded her from performing any and all work beginning March 15, 2004. Accordingly, this evidence will not suffice for purposes of establishing total disability during the claimed period.

Dr. Evans’ April 27, 2004 and March 25, 2005 narrative reports are similarly insufficient to establish total disability from March 15 to June 4, 2004. Her diagnoses included urticaria, exacerbation of chronic sinusitis and exacerbation of panic disorder. Dr. Evans attributed these conditions to appellant’s March 12, 2004 exposure to noxious fumes when a coworker reportedly sprayed something in her face. The Office has not accepted urticaria or exacerbation of panic disorder as arising from the March 12, 2004 employment injury.¹⁸ The only accepted condition was exacerbation of chronic sinusitis.

In her April 27, 2004 report, Dr. Evans noted that appellant was still experiencing significant difficulty with sinus congestion, rhinorrhea and occasional bleeding. However, she

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16a (December 1995).

¹⁶ *Id.* at Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

¹⁷ *Id.*

¹⁸ Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury. *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

did not explain how appellant's ongoing respiratory symptoms precluded her from performing any and all work for more than two and a half months beginning March 15, 2004. The record does not include any contemporaneous medical documentation for the period between appellant's April 27, 2004 medical examination and June 4, 2004, when she returned to work. When Dr. Evans last saw appellant on April 27, 2004, she advised her to return in four weeks. The only treatment mentioned at the time was follow-up psychotherapy. Dr. Evans remarked that appellant's panic disorder was uncontrollable again due to the work problem. This was the first time she mentioned a psychiatric condition and a "work problem." In her March 25, 2005 report, Dr. Evans noted that appellant received therapy, including psychotherapy for her problems and she returned to work when sufficiently recovered. This latest report implied that part of the recovery process was appellant not having to work directly with the offending coworker. As noted, the Office has not accepted an employment-related psychiatric condition. While Dr. Evans stated that appellant was disabled from March 15 to June 4, 2004, her narrative reports did not adequately explain how appellant's accepted condition of exacerbation of chronic sinusitis precluded her from performing all work during this period. Consequently, her April 27, 2004 and March 25, 2005 reports are insufficient to satisfy appellant's burden of proof.

In his December 17, 2008 report, Dr. Hampton indicated that appellant was disabled from work during the claimed period because of the "severity and frequency of her headaches." His report related appellant's "headache and anxiety" to the mental affects of her March 2004 employment injury. Again, the Office has not accepted a psychiatric or emotional condition due to the March 12, 2004 employment injury. It is also noteworthy that the contemporaneous medical evidence did not document any complaints of headache during the period March 15 to June 4, 2004.

The Board finds that the medical evidence is insufficient to establish that appellant was totally disabled during the period March 15 to June 4, 2004 due to her accepted condition of exacerbation of chronic sinusitis. While appellant failed to establish she was totally disabled during the claimed period, she may be entitled to either compensation or COP for her absence from work while attending medical appointments. The records from Advocate Health Care and Dr. Evans in particular, indicated that appellant received treatment on at least six occasions between March 15 and April 27, 2004. Wage-loss compensation and COP may be awarded for documented periods when an injured employee obtained authorized medical services.¹⁹ Dr. Evans indicated that appellant received treatment on March 15, 24, 30, April 7, 13 and 27, 2004. Her diagnoses during that time frame included exacerbation of chronic sinusitis, which is an accepted condition. Three times the Office reviewed appellant's claim for compensation, but not one of those occasions did it consider whether she was entitled to compensation for lost wages incident to obtaining medical treatment. As the Office denied compensation for the entire claimed period without addressing this particular issue, the March 5, 2010 merit decision will be set aside, and the case is remanded for further action consistent with this decision.

¹⁹ See 5 U.S.C. § 8103(a); 20 C.F.R. § 10.205(a)(1); *Gayle L. Jackson*, *supra* note 14.

CONCLUSION

Appellant has not established that she was totally disabled during the period March 15 through June 4, 2004 as a result of her March 12, 2004 accepted employment injury. However, the case is not in posture for decision regarding entitlement to lost wages incident to obtaining medical treatment for her accepted condition.

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2010 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision.

Issued: July 13, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board